

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VINCENT PROCOPIO,
Plaintiff,

v.

CONRAD PREBYS TRUST DBA
SECURE SELF STORAGE, LLC;
CALTRANS RIGHT OF WAY-EXCESS
LAND & AIRSPACE LEASING
BRANCH, a political subdivision of the
California Department of Transportation;
GREGORY J. SMITH; MINICO
INSURANCE AGENCY, LLC;
WILLIAM RITCH, an individual DBA
WEST COAST AUCTIONS, an
unregistered business entity;
CALIFORNIA SELF-STORAGE
ASSOCIATION, the nonprofit trade
association for the self-storage industry,
Defendants.

Case No.: 14cv1651 AJB (KSC)

ORDER:

**(1) STRIKING PLAINTIFF'S
SUPPLEMENTAL DOCUMENTS
RE: CHALLENGE TO CALIFORNIA
BUSINESS AND PROFESSIONS
CODE SECTION 21700 ET SEQ.
(Doc. Nos. 49)**

**(2) CLARIFYING CLAIMS IN THE
OPERATIVE SECOND AMENDED
COMPLAINT;**

**(3) CERTIFYING PLAINTIFF'S
CONSTITUTIONAL CHALLENGE;
AND (Doc. No. 47)**

**(4) ORDERING SERVICE OF THE
SECOND AMENDED COMPLAINT
BY THE U.S. MARSHAL IN
ACCORDANCE WITH 28 U.S.C. §
1915 (Doc. No. 48)**

1 Presently before the Court are several filings by Plaintiff Vincent Procopio
 2 (“Plaintiff”) related to his claims that Defendants unlawfully auctioned the contents of
 3 Plaintiff’s storage unit. (*See* Doc. No. 39.) These documents include a motion for service
 4 through the United States Marshal, (Doc. No. 48), a request for certification of Plaintiff’s
 5 constitutional challenge to California Self-Service Storage Facility Act, (Doc. No. 47),
 6 and a supplemental document regarding Plaintiff’s constitutional challenge, (Doc. No.
 7 49). Plaintiff is proceeding pro se and has been granted *in forma pauperis* status.

8 **I. Amended Documents Relating to Plaintiff’s Constitutional Challenge**

9 In accordance with its duties under 28 U.S.C. § 1915, the Court has screened
 10 several iterations of Plaintiff’s complaint. Most recently, the Court screened Plaintiff’s
 11 second amended complaint, (Doc. No. 39), and issued an order dismissing the majority of
 12 Plaintiff’s claims, (Doc. No. 43). The only claims that survived § 1915 screening were
 13 Plaintiff’s state law claims for breach of contract and conversion, and his constitutional
 14 challenge to the California Self-Service Storage Facility Act. (*See id.*) Plaintiff was
 15 ordered to comply with Federal Rule of Civil Procedure 5.1, governing procedure for
 16 constitutional challenges to statutes, but was not otherwise granted leave to amend his
 17 constitutional challenge.

18 In his most recent filings, Plaintiff has provided an unsigned declaration stating
 19 that the California Attorney General was served in accordance with Rule 5.1. (Doc. No.
 20 47.) Plaintiff fails to attach the document(s) allegedly served on the Attorney General in
 21 compliance with Rule 5.1. (*See id.* at 2) (stating “[a]ttached is a copy of the letter serving
 22 as notification of challenge” but no such letter is attached). In addition, and despite not
 23 being granted leave to amend his constitutional challenge to the California Self-Storage
 24 Facility Act, Plaintiff has filed a new document detailing the grounds for his
 25 constitutional challenge. (Doc. No. 49.)

26 Upon review of the documents filed by Plaintiff, the Court **STRIKES** Doc. No. 49
 27 from the docket. First, no provision permits the filing of an amended constitutional
 28 challenge, nearly two years after Plaintiff first raised the constitutional challenge in his

1 amended complaint. (*See* Doc. No. 9 at 21.) Plaintiff was not granted leave to amend in
2 the Court's order screening his second amended complaint, or any prior order assessing
3 the sufficiency of Plaintiff's pleadings. Additionally, although Plaintiff was granted leave
4 to file a third amended complaint, and had the opportunity to amend several of his
5 dismissed claims, Plaintiff has failed to file a third amended complaint or otherwise
6 amend any dismissed claims. Plaintiff does reference Doc. No. 49 as a third amended
7 complaint. (*See, e.g.*, Doc. No. 49 at 3, 4, 5 84.) However, even if the Court were to
8 construe Doc. No. 49 as Plaintiff's third amended complaint, the document remains
9 flawed for two reasons.

10 First, Doc. No. 49 does not comply with Rule 8. The document does not set for the
11 grounds for the Court's jurisdiction, or include a short and plain statement of the claim
12 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(1), (2). The Court has
13 previously cautioned Plaintiff about the need to comply with Rule 8's "short and plain
14 statement" requirement, encouraging Plaintiff to omit discussions of case law and legal
15 doctrines not central to Plaintiff's claims, and to exclude lengthy restatements of statutory
16 text. (*See* Doc. No. 43 at 4) (indicating that a plaintiff "must set forth the nature of [his]
17 claims in simple, concise, and direct language" and citing Rule 8). As presently styled,
18 Plaintiff's constitutional challenge does not comply with Rule 8.

19 Next, pursuant to Rule 12(f), the Court may strike from a pleading any redundant,
20 immaterial or impertinent matter even in the absence of a motion by a responding party.
21 *See* Fed. R. Civ. P. 12(f). Striking Doc. No. 49 is appropriate because the allegations set
22 forth therein are largely redundant of Plaintiff's constitutional challenge as articulated in
23 his second amended complaint, which survived mandatory screening under § 1915.
24 Additionally, the arguments and authority advanced in Doc. No. 49 are immaterial in the
25 context of an initial pleading such as a complaint. For these reasons, striking Doc. No. 49
26 is appropriate.

27 Lastly, the Court notes Plaintiff's pro se status and the requirement that litigants
28 representing their own interests need not strictly comply with pleading requirements.

1 However, pro se litigants must still endeavor to comply with procedural rules governing
 2 other litigants. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must
 3 follow the same rules of procedure that govern other litigants.”); S.D. Civ. L. R. 83.11.a
 4 (“Any person appearing propria persona is bound by these rules of court and by the Fed.
 5 R. Civ. P. or Fed. R. Crim. P., as appropriate.”). As noted above, Doc. No. 49 fails to
 6 comply with the Federal Rules of Civil Procedure and is appropriately stricken.¹

7 The Clerk of Court is instructed to **STRIKE** Doc. No. 49 from the docket.

8 **II. Remaining Claims and Operative Complaint**

9 When the Court screened Plaintiff’s second amended complaint, several of
 10 Plaintiff’s claims were dismissed, most of which the Court dismissed with leave to
 11 amend. This included Plaintiff’s claims for violations of: the political reform act, (Doc.
 12 No. 43 at 7), the Racketeer Influenced and Corrupt Organizations Act, (*Id.* at 9), claims
 13 related to the application of the Uniform Commercial Code, (*Id.* at 11), and violation of
 14 42 U.S.C. § 1985(3), (*Id.* at 12). Plaintiff does not address any of these claims in any of
 15 his recent filings, including in Doc. No. 49 if construed as a third amended complaint.
 16 Accordingly, the Court finds that Plaintiff has waived any claim related to the above-
 17 referenced statutes, and those claims are **DISMISSED WITH PREJUDICE**.

22 ¹ Because some of Plaintiff’s claims survived screening of the second amended
 23 complaint, the Court declines to dismiss Plaintiff’s claims in their entirety for failure to
 24 comply with Rule 8. However, in light of Plaintiff’s repeated failure to comply with
 25 procedural rules, dismissal would also be appropriate. *See Stafford v. Fresno Cty.*, 187
 26 F.3d 648 (9th Cir. 1999) (affirming dismissal of pro se plaintiff’s amended complaint
 27 where the plaintiff failed to amend deficiencies despite several opportunities and violated
 28 court order by adding new claims to amended pleading without leave of court); *Stith v.*
Busch, 4 F. App’x 521 (9th Cir. 2001) (“Because [the plaintiff’s] second amended
 complaint failed to set forth simple, concise and direct averments, we conclude that the
 district court acted within its discretion in dismissing his action with prejudice.”).

As such, the remaining claims in the second amended complaint are Plaintiff's claims for breach of contract and conversion, and his constitutional challenge.² Because Plaintiff has failed to file a third amended complaint as ordered, the second amended complaint, less the dismissed claims, is the operative pleading.

III. Certification of Constitutional Challenge

Plaintiff has also filed a request for certification of his constitutional challenge to the California Attorney General. (Doc. No. 47.) Plaintiff's request is **GRANTED**. Pursuant to 28 U.S.C. § 2403, the Court must certify to the state attorney general that there is a constitutional challenge to a state statute. The Court hereby certifies to the California Attorney General that Plaintiff has raised a constitutional challenge to the California Self-Service Storage Facility Act, California Business and Professions Code section 17200, *et seq.*, as detailed in the second amended complaint.

The attorney general may now intervene within sixty (60) days of the date of this order with respect to the following questions:

Whether the provisions of the California Self-Service Storage Facility Act violate procedural and substantive due process rights with respect to pre-deprivation notice requirements.

Whether the provisions of the California Self-Service Storage Facility Act violate the Equal Protection Clause of the Fourteenth Amendment.

Whether the small claims provision of the California Self-Service Storage Facility Act violates due process.

² The Court's screening pursuant to § 1915 is in addition to, and not a substitute for, any subsequent challenges to the adequacy of Plaintiff's pleading. *See Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007) (noting "the sua sponte screening and dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [any individual defendant] may choose to bring")

(See Doc. No. 39 at 45, 50, 51.)³

IV. Service through the United States Marshal

Because Plaintiff is proceeding *in forma pauperis*, he is entitled to service through the United States Marshal. Accordingly, Plaintiff has also filed a declaration requesting the Court order the United States Marshal to serve Defendants. (Doc. No. 48.) In cases involving a pro se plaintiff who has sought and been granted *in forma pauperis* status, a United States Marshal, upon order of the court, must serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3); 28 U.S.C. § 1915(d) (in pro se proceedings, “[t]he officers of the court shall issue and serve all process, and perform all duties in such cases”); *see also Moody v. Finander*, No. CIV. 09–0892, 2010 WL 2354586, at *4 (S.D. Cal. June 9, 2010) (directing United States Marshal to effect service on behalf of pro se plaintiff with in forma pauperis status); *Benny v. Pipes*, 799 F.2d 489, 493 n. 4 (9th Cir. 1986) *amended*, 807 F.2d 1514 (9th Cir. 1987) (noting potential opportunity for pro se plaintiff to request in forma pauperis status and utilize service by the Marshal); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (noting section 1915 applies to all IFP applicants, prisoner or non-prisoner). Accordingly, the Court directs the U.S. Marshal to effect service upon the Defendants on Plaintiff’s behalf. *See* 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).

For the reasons set forth above, the Court orders as follows:

1. Doc. No. 49 is **STRIKEN** from the docket.
2. The operative complaint is the second amended complaint, (Doc. No. 39), consisting only of Plaintiff’s claims for breach of contract, conversion, and a constitutional challenge to the California Self-Service Storage Facility Act.

³ Although the Court has granted Plaintiff’s request for certification, that does not forfeit any challenges the Attorney General may have regarding Plaintiff’s compliance with Federal Rule of Civil Procedure 5.1, or otherwise.


1 3. Plaintiff's request that the Court certify his constitutional challenge to the
2 California Attorney General is **GRANTED** with respect to the questions noted above.
3 (Doc. No. 47.)

4 4. The Clerk of Court is directed to provide a copy of this order, as well as the
5 second amended complaint, to the California Attorney General.

6 5. Plaintiff's request for service through the United States Marshal is
7 **GRANTED**. (Doc. No. 48.) The United States Marshal is directed to serve a copy of the
8 second amended complaint and summons on Defendants as directed by Plaintiff on the
9 USM Form 285.

10
11 **IT IS SO ORDERED.**

12
13 Dated: August 31, 2016



Hon. Anthony J. Battaglia
United States District Judge